

**UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS,  
EASTERN DIVISION**

KENNETH SHERRIER,	)	FILED: MARCH 20, 2009
	)	09CV1768
Plaintiff,	)	JUDGE GETTLEMAN
	)	MAGISTRATE JUDGE MASON
v.	)	No. AO
	)	
NCO FINANCIAL SYSTEMS, INC.,	)	
	)	
Defendant.	)	

**PLAINTIFF'S COMPLAINT AND DEMAND FOR JURY TRIAL**

KENNETH SHERRIER (Plaintiff), through his attorneys, KROHN & MOSS, LTD., alleges the following against NCO FINANCIAL SYSTEMS, INC., (Defendant):

**INTRODUCTION**

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, *15 U.S.C. 1692 et seq.* (FDCPA).
2. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

**JURISDICTION AND VENUE**

3. Jurisdiction of this court arises pursuant to *15 U.S.C. 1692k(d)*, which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy."
4. Defendant conducts business in the state of Illinois, and therefore, personal jurisdiction is established.
5. Venue is proper pursuant to *28 U.S.C. 1391(b)(1)*.
6. Declaratory relief is available pursuant to *28 U.S.C. 2201 and 2202*.

## **PARTIES**

7. Plaintiff is a natural person residing in Lyons, Cook County, Illinois.
8. Plaintiff is a consumer as that term is defined by *15 U.S.C. 1692a(3)*, and according to Defendant, Plaintiff allegedly owes a debt as that term is defined by *15 U.S.C. 1692a(5)*.
9. Defendant is a debt collector as that term is defined by *15 U.S.C. 1692a(6)*, and sought to collect a consumer debt from Plaintiff.
10. Defendant is a national debt collection company and conducts business in Illinois.
11. Defendant is a collection agency that in the ordinary course of business, regularly, on behalf of itself or others, engages in debt collection.

## **FACTUAL ALLEGATIONS**

12. Defendant constantly and continuously placed collection calls to Plaintiff seeking and demanding payment for an alleged debt.
13. Defendant called Plaintiff at the following telephone number: 708-442-0723 regarding account #1B8J7M.
14. Defendant called and hung up without leaving messages.
15. On July 1, 2008, without Plaintiff's permission, Defendant electronically withdrew \$2300.00 from Plaintiff's Capital One Bank accounts.
16. As a result of Defendant's unauthorized electronic withdrawal, Plaintiff sustained insufficient funds fees through his bank.
17. Plaintiff called Defendant several times after July 1, 2008, in an attempt to get his money back, but Defendant refused to return Plaintiff's money.

**COUNT I**  
**DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

18. Defendant violated the FDCPA based on the following:

- a. Defendant violated §1692d(5) of the FDCPA when Defendant caused Plaintiff's telephone to ring repeatedly and continuously with the intent to annoy, abuse, and harass Plaintiff.
- b. Defendant violated §1692d(6) of the FDCPA by placing telephone calls without meaningful disclosure of the caller's identity when Defendant called Plaintiff and hung up without leaving a message.
- c. Defendant violated §1692e(10) of the FDCPA by using false representations and deceptive means in an attempt to collect a debt by withdrawing \$2300.00 from Plaintiff's bank account without Plaintiff's approval.
- d. Defendant violated §1692e(10) of the FDCPA by using deceptive means in an attempt to collect a debt when Defendant failed to disclose in subsequent communications that the call was from a debt collector.
- e. Defendant violated §1692e(11) of the FDCPA by failing to disclosure in subsequent communications that the call was from a debt collector.

19. As a direct and proximate result of one or more or all of the statutory violations above Plaintiff has suffered emotional distress (see Exhibit A).

WHEREFORE, Plaintiff, KENNETH SHERRIER, respectfully requests judgment be entered against Defendant, NCO FINANCIAL SYSTEMS, INC., for the following:

20. Declaratory judgment that Defendant's conduct violated the Fair Debt Collection Practices Act,
21. Statutory damages pursuant to the Fair Debt Collection Practices Act, *15 U.S.C. 1692k*,
22. Actual damages (\$2300.00 for the unauthorized withdrawal on July 1, 2008, insufficient funds fees, and all other actual damages sustained by Plaintiff).
23. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act, *15 U.S.C. 1692k*
24. Any other relief that this Honorable Court deems appropriate.

RESPECTFULLY SUBMITTED,

By:           /s/ Adam J. Krohn            
[ ] Adam J. Krohn  
Attorneys for Plaintiff  
Krohn & Moss, Ltd.  
120 W. Madison Street  
10<sup>th</sup> Floor  
Chicago, IL 60602

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, KENNETH SHERRIER, demands a jury trial in this case.

**VERIFICATION OF COMPLAINT AND CERTIFICATION**

STATE OF ILLINOIS

Plaintiff, KENNETH SHERRIER, states the following:

1. I am the Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this Complaint in good faith and solely for the purposes set forth in it.
6. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original.
7. Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified or fabricated these exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.

Pursuant to 28 U.S.C. § 1746(2), I, KENNETH SHERRIER, hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

March 11, 2009  
Date

Kenneth A. Sherrier  
KENNETH SHERRIER

**EXHIBIT A**

I have suffered from the following due to, or made worse by, the actions of the Defendant's debt collection activities:

- |   |                                      |                          |
|---|--------------------------------------|--------------------------|
| 1. Sleeplessness  | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 2. Fear of answering the telephone                            | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 3. Nervousness  | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 4. Fear of answering the door                                 | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 5. Embarrassment when speaking with family or friends         | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 6. Depressions (sad, anxious, or "empty" moods)               | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 7. Chest pains  | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 8. Feelings of hopelessness, pessimism                        | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 9. Feelings of guilt, worthlessness, helplessness             | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 10. Appetite and/or weight loss or overeating and weight gain | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 11. Thoughts of death, suicide or suicide attempts            | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 12. Restlessness or irritability                              | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 13. Headache, nausea, chronic pain or fatigue                 | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 14. Negative impact on my job                                 | <input checked="" type="radio"/> YES | <input type="radio"/> NO |
| 15. Negative impact on my relationships                       | <input checked="" type="radio"/> YES | <input type="radio"/> NO |

Other physical or emotional symptoms you believe are associated with abusive debt collection activities: Constipation

Pursuant to 28 U.S.C. § 1746(2), I hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Dated: 3/11/09

Kenneth A. Sherrier  
Signed Name

KENNETH A SHERRIER  
Printed Name